

Wednesday, September 13, 2006

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Mr. Chiang, Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

Joong Soo Shin, 301400 (AS)

10-22-01 to 9-2-03, \$19,163.44 Tax, \$1,916.36 Negligence Penalty

For Petitioner:

Joong Soo Shin, Taxpayer

Sang I. Lee, Attorney

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the audit overstates petitioner's taxable sales.

Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be submitted for decision.

Lieu Bich-Thi Nguyen and Long Thanh Do, 266727 (EA)

2-10-00 to 10-25-02, \$45,558.17 Tax

For Petitioner:

Lieu Bioch-Thi Nguyen, Taxpayer

Don Le, CPA

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Sales and Use Tax Department properly disallowed claimed nontaxable sales for resale.

Whether adjustments are warranted to the audited amount of unreported taxable measure.

Whether the notice of determination is barred by the statute of limitations.

Whether petitioner has established reasonable cause to be relieved of the amnesty interest penalty.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be submitted for decision.

Pascucci, Inc., 254331 (GH)

7-1-99 to 3-31-03, \$60,058.74 Tax, \$00.00 Negligence Penalty

For Petitioner:

Ian Foster, Representative

Laura Knight, Taxpayer

Jennifer Loren, Bookkeeper

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that unreported taxable sales established by markup are excessive because the allowances for draft beer shrinkage, wine pour size, and well-liquor pour size are inadequate.

Wednesday, September 13, 2006

Whether the measure of tax should be deleted because the error ratios found in the reaudit are less than 10 percent.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Duralum Products, Inc., 213416 (KH)

10-1-99 to 6-30-02, \$81,653.58 Tax

For Claimant:

Kathi Blanton, Representative

John Almquist, Taxpayer

David Perard, Representative

Jan Rawnsley, Representative

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether claimant is entitled to any further refund.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the claim for refund be submitted for decision.

Hector Gonzalez, 251992 (AA)

10-1-95 to 12-31-02, \$33,089.52 Tax, \$8,559.17 Failure to File Penalty, \$3,625.39 Negligence Penalty

For Petitioner:

Kevin Lacey, Attorney

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner made sales before April 1, 2000.

Whether petitioner was negligent.

Whether relief of the penalty for failure to file returns is warranted.

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Michael P. Keegan, 254502 (EA)

4-1-03 to 6-30-03, \$350,848.00 Tax

For Petitioner:

Michael Keegan, Taxpayer

Michael E. Shaff, Attorney

For Sales and Use Tax Department:

Robert Stipe, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Wednesday, September 13, 2006

Issue: Whether the department has met its burden to prove that petitioner is personally liable for the tax incurred by Discount Auto Mart for the second quarter 2003.

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be submitted for decision until after the hearing of *Frederik Van Rooyen*, 255046, 309259.

Perfect PC Technologies, Inc., 258181 (EA)

7-1-99 to 6-30-02, \$165,592.08 Tax, \$00.00 Negligence Penalty

For Petitioner: Herbert Yu, Participant
David Liu, Participant
Neil Lin, Participant

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments are warranted to the audited understatement of reported taxable sales.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, Mr. Parrish absent, the Board ordered that the petition be submitted for decision.

B & R Industries, Inc., 254513 (EA)

10-1-97 to 8-12-00, \$400,000.00 Successor Liability

For Petitioner: Richard L. Barnett, Attorney
Lawrence Kaplan, Attorney
Brian Mills, Taxpayer

For Sales and Use Tax Department: Bradley Heller, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the department has overstated petitioner's successor liability.
Whether petitioner has established reasonable cause to abate the amnesty interest penalty.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be submitted for decision.

Canyon Motors, Ltd., 219451 (AS)

1-1-00 to 12-31-01, \$943,360.97 Tax, \$94,336.12 Negligence Penalty

For Petitioner: Ron Canyon, Taxpayer
John W. Harris, Attorney
G. Michael Smith, CPA

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is entitled to additional adjustments because the department did not properly determine unreported taxable sales.

Whether 310 Motoring, Inc. (310 Inc.), acted as the purchasers' agent or whether petitioner and 310 Inc. were engaged in a joint venture or partnership.

Wednesday, September 13, 2006

Whether the disallowed claimed exempt sales were in fact exempt sales in interstate commerce.

Whether petitioner was negligent.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be submitted for decision.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD
SEPTEMBER 13, 2006**

Joong Soo Shin, 301400 (AS)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the measure of tax be reduced to reflect the fixtures and equipment as conceded by the Department and the negligence penalty be reduced accordingly.

Lieu Bich-Thi Nguyen and Long Thanh Do, 266727 (EA)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Duralum Products, Inc., 213416 (KH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the claim for refund for the remaining amount at issue be denied as recommended by the Appeals Division.

Perfect PC Technologies, Inc., 258181 (EA)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, Mr. Parrish absent, the Board ordered that the measure of tax be reduced to \$567,442.00 as recommended by the Department, and the penalty be deleted as recommended by the Appeals Division.

B & R Industries, Inc., 254513 (EA)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Canyon Motors, Ltd., 219451 (AS)

Final Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish absent, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days from receipt of the hearing transcript to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Wednesday, September 13, 2006

The Board adjourned at 1:20 p.m.

The foregoing minutes are adopted by the Board on November 21, 2006.

Note: The following cases were removed from the calendar prior to the meeting: *Effective Engineering, Inc., 143932*; and, *Frederik Van Rooyen, 255046, 309259*.